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10 NISSAN - INFINITI, LT

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12
13 UNITED STATES BANKRUPTCY COURT
14
15 NORTHERN DISTRICT OF CALIFORNIA

16 In Re: Case No. 10-14260 AJ
17 JOHN M. MARTINEZ and (Chapter 13 Proceeding)

18 CORINA J. MARTINEZ-ZAVALETA, R.S. No. APN-1721

19
20 Debtors.

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22
23 MOTION BY LESSOR, NISSAN -
24 INFINITI, LT, FOR RELIEF FROM
25 AUTOMATIC STAY RE: 2009 NISSAN
26 CUBE (V.I.N. JN8AZ28R89T106138)[(11
U.S.C. §362(d)(1), 11 U.S.C. §362(d)(2)]

27
28 Date: February 24, 2011
Time: 9:00 am
Judge: Alan Jaroslovsky
Ctrm: 99 S. "E" Street,
Santa Rosa, CA

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31
32 This is a core proceeding as defined by the United States Bankruptcy Code and this
33 creditor consents to a final Order or Judgment by the above-entitled Court.

34
35 The above-entitled Court has jurisdiction over the subject matter of this action
36 pursuant to 28 U.S.C. §157(a), et seq. and 28 U.S.C. §1334, et seq.

37
38 PLEASE TAKE NOTICE that as specified above, Lessor NISSAN - INFINITI, LT
39 (hereinafter referred to as "Lessor"), a Lessor of Debtors, JOHN M. MARTINEZ and

1 CORINA J. MARTINEZ-ZAVALETA, (hereinafter collectively referred to as "the Debtor")
2 will move this Court to vacate the automatic stay entered in this proceeding as it pertains to
3 the 2009 Nissan Cube (V.I.N. JN8AZ28R89T106138) (hereinafter referred to as "the
4 property"), so that Lessor's interest in and to the property may be foreclosed or otherwise
5 disposed of in any manner permitted by the laws of the State of California.
6

7 PLEASE TAKE FURTHER NOTICE that there is no provision under the prevailing
8 contractual agreement or under California State law which requires Lessor to send monthly
9 invoices or payment coupons and Lessor contends that upon assignment of the contract to
10 Lessor the Debtor was, in the normal course of business, informed of the identity of the
11 holder of the contract, the amount of the monthly payment, the date upon which the monthly
12 payment is due, and the address to which monthly payments should be sent. Additionally,
13 Lessor contends that the Debtor was also admonished not to rely upon the receipt of monthly
14 statements or payment coupons in order to make the monthly payments.
15

16 PLEASE TAKE FURTHER NOTICE that as specified above, pursuant to the terms
17 of the prevailing contractual agreement, Lessor will move the above-captioned Court to
18 award it reasonable attorneys' fees, as incurred herein.
19

20 This Motion is made on the grounds that the prevailing contractual agreement is in
21 default and that Lessor is without adequate protection because the monthly payments due
22 thereunder are delinquent and the Debtor is still in possession of the property.
23

24 Accordingly, Lessor cannot be assured of repayment of the outstanding balance on
25 the account which is the subject hereof nor can it be assured of the proper operation, care,
26 and/or maintenance of the property. Therefore, Lessor lacks the adequate protection it is
27 entitled to receive pursuant to the applicable provisions of 11 U.S.C. §362.
28

29 Lessor will move the Court to exercise its jurisdiction in this matter and grant Lessor
30 immediate relief from the pending automatic stay provisions which will allow Lessor to take
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1 immediate possession of the property and dispose of the same during the normal course of
2 business.

3 Lessor will further move the above-captioned Court to terminate the pending
4 automatic stay provisions to allow Lessor to send to any party or parties protected by the
5 stay under the following, applicable provisions of 11 U.S.C. §§362, any and all notice
6 required by State and/or Federal law, regulation or statute.

7
8 Also, Lessor will move the Court to grant such other and further relief as the Court
9 may deem just and proper.

10 This Motion is based on the Notice of Motion, the Motion, the Declaration of Krystal
11 Tanner, the pleadings and papers on file in these proceedings and such further oral and
12 documentary evidence as may be presented at the time of hearing on this matter.

13
14 WHEREFORE, Lessor respectfully prays that this Court:

15 1. Vacate the automatic stay provisions effected under 11 U.S.C. §362, along
16 with any and all other stays which might be in effect, so as to allow Lessor to enforce its
17 rights and remedies under the parties' original, contractual agreement and thereby allow
18 Lessor to gain immediate possession of the property and dispose of the same in a
19 commercially-reasonable sale;

20
21 2. Terminate the pending automatic stay provisions to allow Lessor to send to
22 any party or parties protected by the stay under the following, applicable provisions of 11
23 U.S.C. §§362, any and all notice required by State and/or Federal law, regulation or statute;

24
25 3. Allow Lessor to file or amend its unsecured claim to allow Lessor to receive,
26 or otherwise collect, any deficient amount that may exist on the subject account after sale of
the property;

27
28 4. Award Lessor payment of such attorneys' fees and costs as may be
reasonable;

1 5. Waive the provisions of Federal Rules of Bankruptcy Procedure, Rule
2 4001(a)(3); and,

3 6. Grant such other and further relief as the Court may deem just and proper.

5 Dated: January 19, 2011

LAW OFFICES OF
AUSTIN P. NAGEL

7 /s/ Grace E. Feldman

8 Attorneys for Lessor,
9 NISSAN - INFINITI, LT

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